

Amendment and Reply

Applicant: Scott E. Jahns et al.

Serial No.: 10/763,861

Filed: January 22, 2008

Docket No.: M190.113.101/P-9198.00

Title: VESSEL SEALING DEVICES

REMARKS

This is responsive to the Final Office Action mailed on August 24, 2009. Claims 1, 3-18, 20-26, 28, 29, and 48-56 were pending and rejected. Claims 1, 21, and 48 are now amended. Claims 1, 3-18, 20-26, 28, 29, and 48-56 remain pending in the application and are presented for reconsideration and allowance.

Rejection under 35 U.S.C. § 102(e)

Claims 21, 22, 24, 26, 48, 50-54, and 56 are rejected under 35 U.S.C. § 102(e) as anticipated by Golden U.S. Patent No. 6,695,859 (“Golden”). Claims 21 and 48 are independent claims. Claims 22, 24, and 26 depend from claim 21. Claims 50-54 and 56 depend from claim 21. Independent claims 21 and 48 are amended.

Independent claims 21 and 48 have been amended to include the features of “a cutting mechanism” having “a closed configuration for creating the opening in the first blood vessel and an opened configuration . . . for delivering the seal through the tool body and into the opening in the first blood vessel when the cutting mechanism is in the opened configuration.” Support for these amendments is included in at least Figures 29-32 and in the accompanying text found on page 34, line 21-page 35, line 11.

Applicants submit that the amended features are not taught in Golden and that the prior art does not make obvious a modification to Golden to include the cutting mechanism of the amended independent claims. Applicants respectfully submit that independent claims 21 and 48 are patentably distinguishable from the prior art. By virtue of their dependency to claims 21 or 48, claims 22, 24, 26, 50-54, and 56 are also patentably distinguishable from Golden. Accordingly, Applicants respectfully request removal of the rejection and respectfully request allowance of claims 21, 22, 24, 26, 48, 50-54, and 56.

Rejection under 35 U.S.C. § 103(a)

Claims 23, 25, 28, 29, 49 and 55, which depend from either independent claim 21 or 48, were also rejected. Claims 23 and 49 were rejected under 35 U.S.C. § 103(a) as unpatentable

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over Golden, as applied to claim 21 and 48, in view of Fortune. Claims 28 and 29 were rejected under 35 U.S.C. § 103(a) as unpatentable over Golden, as applied to claim 21, in view of Blatter. Claims 25 and 55 were rejected under 35 U.S.C. § 103(a) as unpatentable over Golden, as applied to claim 48, in view of Gianturco U.S. Patent No. 5,258,000 (“Gianturco”).

The rejected claims 23, 25, 28, and 29 depend from independent claim 21, which has been shown to be patentably distinguishable from Golden. Applicants further submit that none of the secondary references of Fortune, Blatter, and Gianturco teach or make obvious the amended features of claim 21. Because the amended features are not shown in Golden, Fortune, Blatter, and Gianturco, the amended features would be missing from any proposed combination of the references. Applicants respectfully submit removal of the rejection of claims 23, 25, 28, and 29 and respectfully request that these claims be allowed.

The rejected claims 49 and 55 depend from independent claim 48, which has been shown to be patentably distinguishable from Golden. Applicants further submit that none of the secondary references of Fortune, and Gianturco teach or make obvious the amended features of claim 21. Because the amended features are not shown in Golden, Fortune, and Gianturco, the amended features would be missing from any proposed combination of the references. Applicants respectfully submit removal of the rejection of claims 49 and 55 and respectfully request that these claims be allowed.

Claims 1, 3-7, and 9-14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Golden U.S. Patent No. 6,695,859 (“Golden”) in view of Burbank et al. U.S. Patent No. 6,689,071 (“Burbank”). Claim 1 is an independent claim, and claims 3-7 and 9-14 depend from claim 1. Claim 1 is amended.

Independent claim 1 has been amended to include the features of “a cutting mechanism” having “a cutting mechanism” having “a closed configuration for creating the opening in the first blood vessel and an opened configuration . . . for delivering the seal through the tool body and into the opening in the first blood vessel when the cutting mechanism is in the opened

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configuration.” Support for these amendments is included in at least Figures 29-32 and in the accompanying text found on page 34, line 21-page 35, line 11.

Applicants submit that the amended features are not taught in Golden or in Burbank, and that the prior art does not make obvious a modification to Golden or to Burbank to include the cutting mechanism of the amended independent claim. Applicants respectfully submit that independent claim 1 is patentably distinguishable from the prior art. By virtue of their dependency to claim 1, claims 3-7 and 9-14 are also patentably distinguishable from the combination of Golden in view of Burbank. Accordingly, Applicants respectfully request removal of the rejection and respectfully request allowance of 1, 3-7, and 9-14.

Claims 8, 15-17, and 20, which depend from independent claim 1, were also rejected. Claim 8 is rejected under 35 U.S.C. § 103(a) as unpatentable over Golden U.S. Patent No. 6,695,859 (“Golden”) in view of Burbank et al. U.S. Patent No. 6,689,071 (“Burbank”) as applied to claim 1, in further view of Fortune U.S. Patent Publication No. 2004/0215231 (“Fortune”). Claims 15-17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Golden in view of Burbank, as applied to claim 1, in further view of Blatter U.S. Patent No. 6,248,117 (“Blatter”). Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Golden in view of Burbank, as applied to claim 1, in further view of Diaz U.S. Patent No. 5,690,674 (“Diaz”).

Independent claim 1 has been shown to be patentably distinguishable from the combination of Golden in view of Burbank. Applicants further submit that none of the additional references of Fortune, Blatter, and Diaz teach or make obvious the amended features of claim 1. Because the amended features are not shown in Golden, Burbank, Fortune, Blatter, and Diaz, the amended features would be missing from any proposed combination of the references. Applicants respectfully submit removal of the rejection of claims 8, 15-17, and 20 and respectfully request that these claims be allowed.

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CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 1, 3-18, 20-26, 28-29 and 48-56 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 1, 3-18, 20-26, 28-29, and 48-56 are respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Reply should be directed to Rudy P. Hofmann at Telephone No. (612) 573-2010, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

Scott E. Jahns et al.,

By their attorneys,

Date: October 23, 2009

RPH:cms

/Rudolph P. Hofmann/

Rudolph P. Hofmann

Reg. No. 38,187